IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 2/2005

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : December 11, 2006

Heard Mr. Jachak, learned counsel for the appellants and Mr. Solao, learned counsel for the respondent.

Appellant nos. 2 and 3 along with deceased appellant no.1 filed the suit against respondent-defendant for declaration and cancellation of will dated 24.9.1999 executed by Pratapsingh Sinhal the father of the plaintiffs in favour of the respondent-defendant was null and void. The suit was dismissed and the appeal preferred therefrom has also been dismissed. After filing of present second appeal, appellant no.1 expired prior to April 2005. On 4.4.2005 learned counsel for the appellants sought time to take steps. However, till date no steps have been taken

to bring legal representatives of appellant no.1 on record.

When the matter was called out for hearing on admission Mr. Solao, learned counsel for respondent submitted that since the legal representatives of appellant no.1 have not been brought on record within the stipulated time, the appeal stands abated insofar as appellant no.1 is concerned. He further submitted that the appeal having abated insofar as appellant no.1, the entire appeal abates since the decree is against the appellants on ground common to all. In support of his submission, learned counsel relied upon the judgment of Apex Court in the case of Sri Chand and others Vs. M/s. Jagdish Pershad Kishan Chand and others (AIR 1966 Supreme Court 1427).

Mr. Jachak, learned counsel appearing for the appellant nos.2 and 3 submitted that the interest of deceased appellant no.1 is sufficiently represented by appellant nos. 2 and 3 and therefore, although the appeal abates as against

appellant no.1, the entire appeal does not abate.

Having considered the submissions made by learned counsel, I find considerable merit in the submission of Mr. Solao. Since the suit was for declaration and cancellation of Will which has been dismissed by the trial Court and upheld by the lower appellate Court, needless to mention that the decrees proceeded on ground common to all the appellants. Therefore, the ratio laid down in the case of Sri Chand (supra) by the Apex Court is squarely applicable in the present case. The appeal having abated as against appellant no.1, the second appeal abates as a whole. Consequently, the appeal stands dismissed as abated.

JUDGE

A.